

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.398/Hyd/2022		
Assessment Year: 2012-13		
M/s. Harshini EPC Private Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad – 500082. PAN : AABCC9335N.	Vs.	The Income Tax Officer, Ward – 2(3), Hyderabad.
(Appellant)		(Respondent)
Assessee by:		Shri P. Murali Mohan Rao
Revenue by:		Shri M. Naveen Kumar
Date of hearing:		27.04.2023
Date of pronouncement:		16.05.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax, National Faceless Appeal Centre (NFAC), Delhi dt.25.07.2022 invoking proceedings under section 143(3) of the Act for the assessment year 2012-13.

2. Though assessee has raised as many as six grounds however the effective grounds raised by the assessee read as under :

“1. The ld.CIT(A) erred in confirming the disallowance made u/s 40(1)(ia) of the Act for Rs.3,29,457/-.

2. The ld.CIT(A) erred in confirming the disallowance made u/s 43B of the Act to the extent of Rs.12,012/- towards VAT payable.

3. The ld.CIT(A) erred in confirming the disallowance made u/s 43B of the Act to the extent of Rs.5,47,653/- on account of employee’s contribution to P.F and E.S.I.

4. The ld.CIT(A) erred in upholding the disallowance made of Rs.8,27,740/- u/s 14A of the Act r.w. Rule 8D of Income Tax Rules, 1962.”

3. The brief facts of the case are that assessee is a private limited company engaged in the business of activity of providing services for erection, commissioning, manufacturing, and consultancy for various industries. Assessee company filed its return of income on 30.09.2012 for the A.Y. 2012-13, admitting taxable income of Rs.97,42,890/-. The return of income was processed u/s 143(1) of the Act. The case was selected for scrutiny and notice u/s 143(2) was issued on 19.08.2013. In response to notices issued, assessee company furnished the information / explanation as called for. After verification of the information / explanation filed, Assessing Officer had completed the assessment u/s 143(3) of the Act on 30.03.2015 interalia making disallowance of Rs.3,29,457/- u/s 40(a)(ia) of the Act, Rs.5,59,665/- towards P.F and VAT u/s 43B of the Act and Rs.8,27,740/- under Rule 8D r.w.s. 14A of the Act and thereby determined the total taxable income at Rs.1,14,59,752/-.

4. Feeling aggrieved with the order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A)/NFAC who granted partial relief to the assessee.

5. Aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

GROUND NO.1

6. With respect to the disallowance of Rs.3,29,457/- under section 40(a)(ia) of the Act, ld. AR had drawn our attention to the order passed by ld.CIT(A) more particularly, to paras 6.0 and 6.1 of the order. Ld. AR had submitted that lower authorities have denied the deduction of payment made by the assessee to M/s. Bajaj Finance Limited and to its auditor on the pretext that the assessee has not deducted the TDS. Ld. AR further submitted that the payee's had paid the taxes in accordance with the law and therefore, no disallowance can be made by the Assessing Officer.

7. On the other hand, ld. DR had submitted that no evidence was furnished by the assessee during the course of assessment proceedings before the lower authorities and therefore, the lower authorities had rightly disallowed the deduction to assessee u/s 40(a)(ia) of the Act.

8. We have heard the rival submissions and perused the material on record. M/s. Bajaj Finance Limited is a financial company and is regularly paying the taxes on its income and similarly, the auditor namely, P. Murali & Co., is also paying the income tax on the receipt of payments in accordance with law . In case, both these persons have paid their respective taxes on the amount received from the assessee, then no disallowance can be made in the hands of the assessee. As pointed out by the Id. DR that necessary evidence was not filed before the lower authorities, hence, the lower authorities had not verified the same. In the light of the above and in view of the prayer of the assessee, we remanding back this issue to the file of Assessing Officer with a direction to verify the contentions of the assessee that whether the taxes were duly paid by the said M/s. Bajaj Finance Limited and by auditor P. Murali and Co. on the amount which was disallowed by the Assessing Officer u/s 40(a)(ia) of the Act. The hon'ble Delhi High Court in the case of CIT Vs. Ansal Landmark Township Pvt. Ltd. 377 ITR 635 had held that the provision inserted by way of Finance Act, 2012 w.e.f 01.04.2013 was a retrospective curative provision. In view thereof, the benefit of the second proviso to section 40(a)(ia) of the Act is required to be given to the assessee in case, the assessee fulfills all the conditions mentioned therein. Needless to say this issue shall be decided by the assessing officer after following the principle of natural justice and after due opportunity of hearing to the assessee. Hence, this issue is remanded back to the file of Assessing Officer with the above said direction. Thus, ground No.1 of the assessee is allowed for statistical purposes.

GROUND Nos.2 AND 3

9. Ground Nos.2 and 3 pertain to disallowance of Rs.5,59,665/- (Rs.12,012/- towards VAT + Rs.5,47,653/- towards E.S.I & P.F.) under section 43B of the Act. It was the contention of the assessee that the lower authorities have disallowed the payment made by the assessee under VAT and E.S.I & P.F. It was submitted that the assessee had deposited the said amount within a period of time and therefore, it cannot be disallowed u/s 43B of the Act.

10. On the other hand, ld. DR had submitted that the amounts were disallowed by the Assessing Officer and ld.CIT(A) as the assessee has failed to substantiate that the deposits of the amounts were made within the time granted by the VAT, ESI and PF statute. Learned DR placed heavy reliance on the authorities below. To justify the conclusions reached by the learned CIT(A) that the assessee is not entitled to claim the deduction in respect of the delayed remittance of the employees' contribution of PF and ESI, he placed reliance on the decision reported in Checkmate Services Pvt. Ltd., Vs. CIT, [2022] 143 taxmann.com 178 (SC). He, however, fairly brought it to our notice that subsequently there are two decisions rendered by different Co-ordinate Benches of this Tribunal in the case of M/s P R Packaging Service Vs. ACIT in ITA No.2376/Mum/2022 (AY.2019-20) and M/s. Electrical India Vs. ADIT, CPC in ITA No.789/Chny/2022, (AY.2019-20) wherein contrary views are taken in case where the disallowance under section 36(iv)(a) was made while processing the return under section 143(1) of the Act. He submitted that as has been held in P.V. George v. State of Kerala, (2007) 3 SCC 557, the law declared

by the Hon'ble Supreme Court will always have retrospective effect, if not otherwise stated to be so specifically.

11. We have heard the rival submissions and perused the material on record. With respect to these two grounds, the lower authorities have failed to make the specific order thereby making it abundantly clear the payments were not made within the time permitted by the parents statute, namely ESI, PF and VAT. Hence we are of the opinion that the matter is required to be remanded back for verification to the file of Assessing Officer with a direction to the assessee to produce necessary challans of deposit of the VAT, ESI and PF contribution under the respective Acts within the time granted by the statute. In case, if the assessee produces the said documents to the satisfaction of the Assessing Officer which shows that the assessee had deposited the amount within the time provided by the said Acts (VAT, ESI and PF Act) and in that eventuality, the Assessing Officer shall allow the deduction to the assessee. Needless to say this issue shall be decided by the assessing officer after following the principle of natural justice and after affording opportunity of hearing to the assessee. Thus, these grounds of the assessee are allowed for statistical purposes.

GROUND NO.4

12. The last ground raised by the assessee is with respect to the disallowance of Rs.8,22,740/- u/s 14A read with Rule 8D of Income Tax Rules. It is the contention of the ld. AR that during the assessment for the year under consideration, the assessee has not raised any exempt income and therefore, the action on the part of the Assessing Officer is without any merit. He relied upon the following decisions :

1. *CIT Vs. Chettinad Logistics Pvt. Ltd (2018) 95 taxman.com 250*
2. *Prathista Industries Ltd Vs. DCIT – ITA No.1302/Hyd/2015.*
3. *PCIT Vs. Oil Industry Development Board – 103 taxmann.com 326 (SC).*
4. *ACIT Vs. M/s. Lanco Hydro Power Limited - (ITA No.1931 & 1932/Hyd/2017.*
5. *PCIT Vs. Karnataka State Financial Corporation Ltd. – 127 taxmann.com 115.*
6. *PCIT Vs. Nam Estate P. Ltd – 127 taxmann.com 824.*
7. *Cheminvest Ltd. Vs. CIT – (2015) 61 taxmann.com 118.*
8. *PCIT Vs. Today Network Ltd. – (2022) 141 taxmann.com 275.*
9. *Vibha Agrotech Limited Vs. DCIT – ITA No.179/Hyd/2018.*

13. Per contra, ld. DR had submitted that the amendment under section 14A of the Act is introduced by the Finance Act, 2022 is retrospective in nature and therefore, the ld.CIT(A) had rightly dismissed the claim of the assessee. Further, he had relied upon the CBDT's Circular No.5/2014 dt.11/02/2014 which clarifies that Rule 8 D r.w. Section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

14. We have heard the rival submissions and perused the material on record. By the decision of ACIT Vs. Vireet Investment P. Ltd., (2017) [165 ITD 27] (Delhi) (SB), it was held that no addition u/s 14A of the Act can be made in the hands of the assessee if assessee has not received any exempt income during the year under consideration. In the said decision it was held as under :

“11.6 In the backdrop of these facts the Tribunal's order was upheld by the Hon'ble High Court and Hon'ble Supreme Court. The Hon'ble Supreme Court, inter alia, held that it is the purpose of the expenditure that is relevant in determining the applicability of section 57(iii) and that purpose must be making or earning of income. It was further held that section 57(iii) does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction. It does not say that the expenditure shall be deductible only if

any income is made or earned. There is in fact nothing in the language of section 57(iii) to suggest that the purpose, for which the expenditure is made, should fructify into any benefit by way of return in the shape of income."

Further, recently, the hon'ble Delhi High Court in the case of Chem Investment 378 ITR 33 and also in the case of CIT Vs. Chettinad Logistics 80 taxmann.com 221 had also decided the issue in favour of the assessee.

15. With respect to the retrospective applicability of section 14A in the light of the amendment brought in the Act, Delhi High Court in the case of Era Infrastructure (India) Ltd. 2022] 141 taxmann.com 289 (Delhi) had held that amendment made by Finance Act, 2022 to section 14A by inserting a non-obstante clause and Explanation will take effect from 01.04.2022 and cannot be presumed to have retrospective effects. In the light of the above, this ground is allowed as it is the case of the Assessing Officer / ld.CIT(A) that the assessee has not earned any exempt income during the year under consideration. Thus, this ground of the assessee is allowed.

16. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 16th May, 2023.

Sd/-

**(RAMA KANTA PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(LALIET KUMAR)
JUDICIAL MEMBER**

Hyderabad, dated 16th May, 2023
TYNM/Sr.PS

Copy to:

S.No	Addresses
1	M/s. Harshini EPC Private Limited, C/o. P. Murali & Co., Chartered Accountants, 6-3-655/2/3, Somajiguda, Hyderabad - 500082.
2	The Income Tax Officer, Ward - 2(3), Hyderabad.
3	DR, ITAT Hyderabad Benches
4	Guard File

By Order